

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

BRIAN KOPATZ	§	
VS.	§	CIVIL ACTION NO. 1:17-CV-261
DIRECTOR, TDCJ-CID	§	

MEMORANDUM OPINION REGARDING TRANSFER

Petitioner, Kopatz, an inmate currently confined at the Barry Telford Unit with the Texas Department of Criminal Justice, Correctional Institutions Division, proceeding *pro se*, brings this petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254.

The above-styled action was referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636 and the Local Rules for the Assignment of Duties to the United States Magistrate Judge for findings of fact, conclusions of law, and recommendations for the disposition of the case.

Discussion

Title 28 U.S.C. § 2254(a) allows a district court to “entertain an application for writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a). A state prisoner is required to file his federal petition for writ of habeas corpus in either the district where the prisoner is incarcerated or the district where the prisoner was convicted and sentenced. 28 U.S.C. § 2241(d). Although both district courts have jurisdiction to entertain the application, “[t]he district court for the district wherein such an application is filed in the exercise of its discretion and in furtherance of justice may transfer the application to the other district court for hearing and determination.” *Id.*

In the present case, petitioner is held pursuant to judgment and sentences out of Duval County, Texas which lies within the Southern District of Texas, Corpus Christi Division. Petitioner is currently incarcerated at the Barry Telford Unit out of Bowie County, Texas which lies within the

Eastern District of Texas, Texarkana Division. For reasons unknown, petitioner filed this petition in the Eastern District of Texas, Beaumont Division, which is not the proper venue. Pursuant to 28 U.S.C. § 1406(a), this Court “shall dismiss, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” In the interest of justice, this Court will transfer the application to the Eastern District of Texas, Texarkana Division for hearing and determination.

Conclusion

The Court has considered the circumstances underlying the particular facts of this case and has determined that the interests of justice would be served by transferring this petition to the division where petitioner is incarcerated. Therefore, the petition should be transferred to the Texarkana Division of the Eastern District of Texas for hearing and determination. An order transferring the case will be entered by the undersigned.

SIGNED this 10th day of July, 2018.



Zack Hawthorn
United States Magistrate Judge